# **CHAPTER 152: FLOOD CONTROL**

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#### Cross-reference:

Planning and Development, see Chapter 153

Zoning Code, see Chapter 156

#### **GENERAL PROVISIONS**

### § 152.01 STATE DELEGATION OF RESPONSIBILITY.

The legislature of the State of New Mexico has in (NMSA) 1978 Section 3-18-7 NMSA § 3-41-5 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses.

(Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

#### § 152.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ALLUVIAL FAN FLOODING.** Flooding occurring on the surface of an alluvial fan or similar land form which originated at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

**APEX.** Point on an alluvial fan or similar land form below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

**APPEAL.** A request for a review of the City Manager's interpretation of any provision of this chapter or a request for a variance.

**AREA OF SHALLOW FLOODING.** A designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (F.I.R.M.) with a 1% chance or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. The flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD. The land in the flood plain within a community subject to a 1% or greater chance of flooding many given year. The area maybe designated as Zone A on the Flood Hazard Boundary Map (F.H.B.M.). After detailed rate making has been completed in preparation for publication of the F.I.R.M., Zone A usually is refined into Zones A, AE, AK, AO, Al-99, VO, V1-30, VE, or V.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

**—BASEMENT.** Any area of the building having its floor subgrade (below ground level) on all sides.

**CRITICAL FEATURE.** An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT.** Any manmade change in improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.

#### ELEVATED BUILDING. A nonbasement building:

- (1) Built, in the case of a building in Zones Al-30, AE, A, A99, AO, AK, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones, V1-30, VE, or V to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water; and
- (2) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood in the case of Zones Al-30, AE, A, A99,

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AO, AK B, C, X, and D, *ELEVATED BUILDING* also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE or V, *ELEVATED BUILDING* also includes a building otherwise meeting the definition of *ELEVATED BUILDING*, even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of 44 C.F.R. § 60.3(e)(5) of the National Flood Insurance Program Regulations.

**EXISTING CONSTRUCTION.** For the purpose of determining rates, structures for which the "start of construction" commenced before the effective sate of the F.I.R.M. or before 1-1-1975, for F.I.R.M.S. effective before that date. **EXISTING CONSTRUCTION** may also be referred to as "existing structures."

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the flood plain management regulation adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD** or **FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or run-off of surface waters from any source.

**FLOOD HAZARD BOUNDARY MAP** (F.H.B.M.). An official map of a community, issued by the Federal Insurance Administration, where the areas within the boundaries of special flood hazards have been designated as Zone A.

**FLOOD INSURANCE RATE MAP** (F.I.R.M.). An official map of a community, on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY.** The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary Floodway Map.

**FLOOD PLAIN** or **FLOOD-PRONE AREA.** Any land area susceptible to being inundated by water from any source. (See **FLOOD** or **FLOODING**)

**FLOOD PLAIN MANAGEMENT REGULATIONS.** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes the state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROOFING.** Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminated flood damage to real estate or improved property, water and sanitary facilities, structures, or their contents.

**FLOOD PROTECTION SYSTEM.** Those physical structural works for which funds have been authorized, appropriated, and expanded and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. The system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOODWAY** (**REGULATORY FLOODWAY**). The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FUNCTIONALLY INDEPENDENT USE.** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo and passengers and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

## HISTORIC STRUCTURE. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a list maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually fisted on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

- (a) By an approved state program as determined by the Secretary of the Interior; or
- (b) Directly by the Secretary of the Interior in states without approved programs.

**LEVEE.** A manmade structure, usually in earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM.** A flood protection system which consists of a levee, or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that the enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of §60.3 of the National Flood Insurance Program regulations.

**MANUFACTURED HOME.** A structure, transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term **MANUFACTURED HOME** also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term **MANUFACTURED HOME** does not include park trailers, travel trailers, and other similar vehicles.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into 2 or more manufactured home lots for rent or sale.

*MEAN SEA LEVEL.* For the purpose of the National Flood Insurance Program, the National Geodetic Vertical Datum (N.G.V.D.) of 1929North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**NEW CONSTRUCTION.** For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial F.I.R.M. or after 12-31-1974, whichever is later, and includes any subsequent improvements to the structures. For flood plain management purposes, **NEW CONSTRUCTION** means structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community and includes any subsequent improvements to the structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the

construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of flood plain management regulations adopted by a community.

#### **RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but a temporary living quarters for recreational camping, travel, or seasonal use.

START OF CONSTRUCTION. For other than new construction or substantial improvements under the Coastal Barriers Resources Act, being 16 U.S.C. §§ 3501 et seq., issued, provided the actual start date of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, or filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual START OF CONSTRUCTION means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

#### SUBSTANTIAL IMPROVEMENT.

- (1) Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before "start of construction" of the improvement.
- (2) This includes structures which have incurred "substantial damage" regardless of the actual repair work performed.

- (3) The term does not, however, include either:
- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or
- (b) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure."

**VARIANCE.** A grant of relief to a person from the requirement of this chapter when specific enforcement would result in unnecessary hardship. A **VARIANCE**, therefore, permits construction or development in a manner otherwise prohibited by this chapter. (For full requirements see 44 C.F.R. § 60.6 of the National Flood Insurance Program Regulations).

#### VIOLATION.

- (1) The failure of a structure or other development to be fully compliant with the community's flood plain management regulations.
- (2) A structure or other development without the elevation certificate or other certifications or other evidence of compliance required in 44 C.F.R. § 60.3 is presumed to be in violation until the time as that documentation is provided.

WATER SURFACE ELEVATION. The height, in relation to the National Geodetic Vertical Datum (N.G.V.D.) of 1929 North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

(1981 Code, § 10-16) (Ord. 641, passed 8-8-1978; Am. Ord. 745, passed 2-24-1987; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

## § 152.03 FINDINGS OF FACT.

- (A) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.
- (B) These flood losses are created by the cumulative effect of obstructions in flood plains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(1981 Code, § 10-17) (Ord. 641, passed 8-8-1978; Am. Ord. 960, passed 7-28-2009)

# § 152.04 PURPOSE.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in flood plains;
- (F) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in a manner as to minimize future flood blight areas; and
  - (G) Ensure that potential buyers are notified that property is in a flood area.

(1981 Code, § 10-18) (Ord. 641, passed 8-8-1978; Am. Ord. 960, passed 7-28-2009)

#### § 152.05 METHODS OF REDUCING FLOOD LOSSES.

In order to accomplish its purposes, this chapter uses the following methods:

- (A) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;
- (B) Require that uses vulnerable to floods, including facilities which serve the uses, be protected against flood damage at the time of initial construction;
- (C) Control the alteration of natural flood plains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (D) Control filling, grading, dredging, and other development which may increase flood damage; and/or
- (E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(1981 Code, § 10-19) (Ord. 641, passed 8-8-1978; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

## § 152.06 TERRITORIAL APPLICATION.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Raton, New Mexico and other flood plains that are adopted by the Raton City Commission.

(1981 Code, § 10-20) (Ord. 641, passed 8-8-1978; Am. Ord. 960, passed 7-28-2009)

# § 152.07 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

- (A) The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Colfax County, New Mexico and Incorporated Areas," dated November 4, 2010, with accompanying Flood Insurance Rate Maps (FIRMs) dated November 4, 2010. The areas of special hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for the City of Raton," dated 5 7 2001, with accompanying Flood Insurance Rate Maps and Flood Boundary Floodway Maps (F.I.R.M. and F.B.F.M.) and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.
- (B) Other flood plain area may be designated by the Raton City Commission upon request by the Flood Plain Manager. These flood plain areas may be determined in 1 of 2 ways:
  - (1) Flood plains may be delineated by accepted hydrologic and hydraulic practices; or
  - (2) Flood plains may be areas flooded by a historic flood.
- (C) Before flood plains other than special flood hazard area designated by the Federal Emergency Management Agency may be adopted, they must be approved by the Federal Emergency Management Agency for flood plain management purposes.
- (D) If the base flood (100-year flood) has been determined for a stream reach, in no case shall a flood plain be adopted that has a flood elevation lower than the base flood elevation.

(1981 Code, § 10-21) (Ord. 641, passed 8-8-1978; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

# § 152.08 ESTABLISHMENT OF A FLOOD PLAIN USE PERMIT.

A flood plain use permit shall be required to ensure conformance with the provisions of this chapter.

(Ord. 960, passed 7-28-2009)

**Comment [F1]:** Do not add this clause. Automatic adoption is not allowed in NM.

Comment [F2]: I recommend you delete Section B 1 and 2. First, your reference is to regulatory floodplains all of which begin with "A", like Zone AE. If additional regulatory floodplains or Special Flood hazard Areas (SFHAs) are determined by engineering methods, then they need to be reported to FEMA via a LOMR and the FIRMs changed.

Second: by definition, even Zone X is considered a floodplain. It is common for large or historical floods to encroach into Zone X but that does not change the area into an SFHA. Regulatory floodplains are those where the water surface level has a 1% chance of being met or exceeded in any given year – also called the 100 year flood.

Comment [F3]: I recommend you delete this reference also. It's assumend that FEMA will make the official declaration that a new SFHA has been determined and it does so by reissuing the map.

Comment [F4]: Not sure what this means

# § 152.09 COMPLIANCE REQUIRED.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

(1981 Code, § 10-22) (Ord. 641, passed 8-8-1978; Am. Ord. 960, passed 7-28-2009) Penalty, see § 152.99

# § 152.10 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. 960, passed 7-28-2009)

# § 152.11 INTERPRETATION OF PROVISIONS.

- (A) This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where a provision of this chapter and a provision of another ordinance or of another chapter of this code conflict or overlap, whichever provision imposes the more stringent restrictions shall prevail.
  - (B) In the interpretation and application of this chapter, all provisions shall be:
    - (1) Considered as minimum requirements;
    - (2) Liberally construed in favor of the City Commission; and
    - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(1981 Code, § 10-25) (Ord. 641, passed 8-8-1978; Am. Ord. 960, passed 7-28-2009)

#### § 152.12 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards, or uses permitted within the areas, will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, or any officer or employee thereof, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(1981 Code, § 10-26) (Ord. 641, passed 8-8-1978; Am. Ord. 960, passed 7-28-2009)

#### **ADMINISTRATION**

#### § 152.20 DESIGNATION OF THE FLOOD PLAIN ADMINISTRATOR.

The Raton Planning Director is hereby appointed the Flood Plain Administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 C.F.R. (National Flood Insurance Program Regulations) pertaining to flood plain management.

(Ord. 960, passed 7-28-2009)

# § 152.21 ADMINISTRATION AND IMPLEMENTATION; DUTIES AND RESPONSIBILITIES OF ADMINISTRATOR.

The duties and responsibilities of the Flood Plain Administrator shall include, but not be limited to, the following:

- (A) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter;
- (B) Ensure that all flood plain use permits are reviewed by a Certified Flood Plain Manager;
- (C) Review development permit applications to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;
- (D) Review and approve, or deny all applications for development permits required by the adoption of this chapter;
- (E) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state, or local government agencies (including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required;
- (F) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Flood Plain Administrator shall make the necessary interpretation;
- (G) Notify, in riverine situations, adjacent communities and the New Mexico Department of Public Safety New Mexico Department of Homeland Security and Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency;
- (H) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

- (I) When base flood elevation data has not been provided in accordance with § 152.07, the Flood Plain Administrator shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source in order to administer the provisions of §§ 152.40 through 152.45;
- (J) When a regulatory floodway has not been designated, the Flood Plain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones Al-30 and AE on the community's F.I.R.M. unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the community; and
- (K) Under the provision of 44 C.F.R.. § 65.12, of the National Flood Insurance Program Regulations, a community may approve certain development in Zones Al-30, AE, AH on the community's F.I.R.M. which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first applies for a conditional F.I.R.M. revision through F.E.M.A. (conditional letter of map revision).

(1981 Code, § 10-23) (Ord. 641, passed 8-8-1978; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

# § 152.22 DEVELOPMENT PERMIT REQUIRED.

A development permit shall be required to ensure conformance with the provisions of this chapter.

(1981 Code, § 10-36) (Ord. 641, passed 8-8-1978; Am. Ord. 960, passed 7-28-2009)

#### § 152.23 DEVELOPMENT PERMIT; APPLICATION.

Application for a development permit shall be presented to the Flood Plain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required.

- (A) In Zones A or AO or other designated flood plains where no base flood elevation is provided:
  - (1) The elevation of the lowest floor of any building above the highest adjacent grade;
- (2) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
  - (3) Maintain a record of all such information in accordance with § 152.41.

- (B) In Zones A or AO or other designated flood plains where a base flood elevation is provided:
- (1) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential flood proofed structure shall meet the floodproofing criteria of § 152.41;
- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
  - (5) Maintain a record of all such information in accordance with § 152.41.

(1981 Code, § 10-37) (Ord. 641, passed 8-8-1978; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

#### § 152.24 DEVELOPMENT PERMIT; ISSUANCE.

Approval or denial of a development permit by the Flood Plain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

- (A) The danger to life and property due to flooding or erosion damage;
- (B) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;
  - (C) The danger that materials may be swept onto other lands to the injury of others;
  - (D) The compatibility of the proposed use with existing and anticipated development;
- (E) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (F) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;
- (G) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
  - (H) The necessity to the facility of a waterfront location, where applicable;

- (I) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and
  - (J) The relationship of the proposed use to the comprehensive plan for that area.

(1981 Code, § 10-38) (Ord. 641, passed 8-8-1978; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

# § 152.25 ELEVATION CERTIFICATES AND FLOOD PROOFING CERTIFICATES.

- (A) The Flood Plain Administrator will review all F.E.M.A. elevation certificates and flood proofing certificates for completeness and correctness.
- (B) The Flood Plain Administrator shall maintain a file of all F.E.M.A. elevation certificates and flood proofing certificates and make them available to the public upon request.

(Ord. 960, passed 7-28-2009)

# § 152.26 VARIANCES AND APPEALS.

- (A) The Planning and Zoning Commission as established by the City Commission shall hear and render judgment on requests for variances from the requirements of this chapter.
- (B) The Planning and Zoning Commission shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Flood Plain Manager in the enforcement or administration of this chapter.
- (C) Any person or persons aggrieved by the decision of the Planning and Zoning Commission may appeal the decision in the courts of competent jurisdiction.
- (D) The Flood Plain Manager shall maintain a record of all actions involving an appeal and shall report variances to the Federal Insurance Administration upon request.
- (E) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (F) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided the relevant factors in § 152.25 have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

- (G) Upon consideration of the factors noted above and the intent of this chapter, the Planning and Zoning Commission may attach the conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.
- (H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (I) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  - (J) Prerequisites for granting variances:
- (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (2) Variances shall only be issued upon:
    - (a) A showing of good and sufficient cause;
- (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation no more than 2 feet below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (K) Variances may be issued by a community for new construction and substantial improvements and for other developments necessary for the conduct of a functionally dependent use, provided that:
  - (1) The criteria outlined in this section are met; and
- (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(1981 Code, § 10-24) (Ord. 641, passed 8-8-1978; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

#### PROVISIONS FOR FLOOD HAZARD REDUCTION

### § 152.40 GENERAL STANDARDS.

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements.

- (A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (C) All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (D) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (E) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters.
- (F) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(1981 Code, § 10-46) (Ord. 641, passed 8-8-1978; Am. Ord. 745, passed 2-24-1987; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009) Penalty, see § <u>152.99</u>

# § 152.41 SPECIFIC STANDARDS.

- (A) In A Zones and other designated flood plains where no base flood elevation is provided, the following provisions are provided:
- (1) All new construction. New construction and substantial improvement of any structure, including manufactured housing, shall be built or placed on compacted fill that is at least 2 feet above the highest adjacent grade prior to any disturbance of the building site. Such fill shall extend at least 10 feet from the walls of the structure before it drops below the 2-foot elevation. All residential structures shall have positive drainage away from the buildings. The finished floor of the structure shall be at least 1 foot above the elevation of the fill. A registered professional engineer, architect, or land surveyor shall submit a certification to the Flood Plain Administrator that the standard of this division (A) as proposed in § 152.23 is satisfied.

**Comment [F5]:** What is the difference between A1 and B1 below? A1 might work if no BFEs are available.

- (2) *Enclosures*. New construction and substantial improvements, with areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which is subject to flooding shall not be enclosed.
- (B) In all areas of special flood hazards where base flood elevation data has been provided, as set forth in §§ 152.07, 152.21, or 152.42, the following provisions are required.
- (1) All new construction. New construction and substantial improvement of any structure, including manufactured housing, shall be built or placed on compacted fill that is at least as high as the base flood elevation. Such fill shall extend at least 10 feet from the walls of the structure before it drops below the base flood elevation. All residential structures shall have positive drainage away from the buildings. A registered professional engineer, architect, or land surveyor shall submit a certification to the Flood Plain Manager that the standard of this division (B) as proposed in § 152.23, is satisfied.
- (2) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to at least 1 foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Flood Plain Manager that the standard of this division (B) as proposed in § 152.23, is satisfied.
- (3) Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements for residential construction.
- (4) Enclosures. New construction and substantial improvement, with areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which is subject to flooding shall not be enclosed.
  - (5) Manufactured homes.
- (a) Require that all manufactured homes to be placed within Zone A on a community's H.B.M. or F.I.R.M. or in any flood plain area where no base flood elevation is provided, shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frames ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the community's F.I.R.M. or in any flood plain where base flood elevations are provided, on sites outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home had incurred substantial damage, comply with the provisions of § 152.41(B)(1) and be elevated on a permanent foundation such that the lowest floor of the

**Comment [F6]:** Please call me on this one so we can discuss

**Comment [F7]:** This requirement and the 10 foot requirement are excellent additions to your ordinance

**Comment [F8]:** We need to talk about this too. By definition, an enclosure can be a crawlspace or any open area below the lowest floor that is below the BFE

**Comment [F9]:** You don't have FHBMs anymore. You have a FIRM

manufactured home is elevated to at least 1 foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH, and AE on the community's F.I.R.M. that are not subject to the provisions of division (B)(6) below be elevated so that either:
- 1. The lowest floor of the manufactured home is at least 1 foot above the base flood elevation; or
- 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
  - (6) Recreational vehicles.
- (a) Require that recreational vehicles placed on sites within Zones A1-30 and AE on the community's F.I.R.M. or in any flood plain where base flood elevations are provided, either:
  - 1. Be on the site for fewer than 180 consecutive days; or
  - 2. Be fully licensed and ready for highway use; or
- 3. Meet the permit requirements of  $\S$  152.23 and the elevation and anchoring requirements for manufactured homes in division (B)(5) above.
- (b) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, it attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

(1981 Code, § 10-47) (Ord. 641, passed 8-8-1978; Am. Ord. 745, passed 2-24-1987; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009) Penalty, see § <u>152.99</u>

#### § 152.42 STANDARDS FOR SUBDIVISION PROPOSALS.

- (A) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with \$\$ 152.03 and 152.05.
- (B) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet development permit requirements of this chapter, and the provisions of §§ 152.40 through 152.45.

- (C) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of mobile home parks and subdivisions, which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to §§ 152.07 or 152.21.
- (D) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.
- (E) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

(1981 Code, §10-48) (Ord. 641, passed 8-8-1978; Am. Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009) Penalty, see § <u>152.99</u>

#### § 152.43 STANDARDS FOR UTILITIES.

- (A) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
  - (1) Infiltration of flood waters into the systems; and
  - (2) Discharge from the systems into flood waters.
  - (B) All new water wells shall:
    - (1) Either:
      - (a) Have the casing extend at least 1 foot above the base flood elevation: or
      - (b) Be sealed so that flood water cannot enter the casing.
- (2) Have all electrical controls and devices elevated at least 1 foot above the base flood elevation or have such electrical controls and devices flood proofed to at least 1 foot above the base flood elevation.
- (C) On-site waste disposal systems shall be located to avoid impairment to them, or contamination form them during flooding.
  - (D) Septic tanks located within flood plains shall:
- (1) Be anchored to prevent flotation in the event that the ground is saturated from the bottom of the tank to ground level;
  - (2) Be sealed so that water will not infiltrate the tank:

- (3) Be sealed so that sewage will not escape the tank; and
- (4) Have 1-way valves to prevent sewage from leaving the tank if the tank is inundated and the ground is saturated from the bottom of the tank to ground level.

(Ord. 960, passed 7-28-2009)

## § 152.44 STANDARDS FOR ACCESSORY STRUCTURES.

- (A) An accessory structure is defined as a structure not exceeding 600 square feet in size, unfinished on the interior, which can be used only for parking and limited storage. The structure shall not be used for human habitation including, but not limited to, work, sleeping, living, cooking or restroom areas and shall be low-valued and representing a minimal investment.
- (B) The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters.
- (C) The structure shall be designed to have low flood damage potential and constructed with flood-resistant materials.
- (D) The structure shall be firmly anchored to prevent flotation, collapse and lateral movement.
- (E) The structure must contain openings to relieve hydrostatic pressure during a flood at those levels below the base flood elevation.
- (F) The structure shall be built in such a manner that all service facilities including electrical and heating equipment are elevated at or above the base flood elevation or are floodproofed in accordance with federal regulations and the regulations of this chapter.
  - (G) Floodway requirements must be met in the construction of the accessory structure.
- (H) No accessory structures shall be allowed in V zones except for disposable sheds. Those sheds, if constructed, cannot have fill utilized for structural support and those areas of the disposable shed located below the base flood elevation must remain free of obstruction or be constructed with non-supported break-away walls, open lattice work or insect screening. All accessory structures located in a V zone shall be located so as not to cause damage to adjacent and nearby structures.

(Ord. 960, passed 7-28-2009)

# § 152.45 FLOODWAYS.

Floodways located within areas of special flood hazard established in § 152.07, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity

Comment [F10]: This is an excellent addition.

Most communities don't bother to go this far.

**Comment [F11]:** I recommend you delete this section. You don't have any V zones. V Zones are strictly for coastal Zones with wave action.

of flood water which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (A) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (B) If division (A) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 152.40 through 152.45.
- (C) Under the provisions of 44 C.F.R. § 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional F.I.R.M. and floodway revision through F.E.M.A.

(Ord. 907, passed 4-10-2001; Am. Ord. 960, passed 7-28-2009)

#### § 152.99 PENALTY.

- (A) Whenever in this chapter an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this chapter the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any provision or the failure to perform any act shall be punishable by a fine of not exceeding \$500 or by imprisonment not to exceed 90 days, or by both the fine and imprisonment, in the discretion of the court.
- (B) Each day any violation or failure to perform the act shall continue shall constitute a separate offense and a separate violation of an ordinance of this city, unless otherwise specifically provided.

(1981 Code, § 10-1) (Ord. 809, passed 10-10-1989; Am. Ord. 960, passed 7-28-2009)

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